

REMARKS

Claims 1-3, 5, and 27-34 are pending. Claims 4, 6-8, 10-13, 16-23, 25-26, and 35-40 stand withdrawn. In the instant amendment, claims 1, 27, and 31 have been amended. Upon entry of the instant amendments, claims 1-3, 5, and 27-34 will be pending and under consideration.

I. AMENDMENTS TO THE CLAIMS

Claims 1, 27, and 31 have been amended to delete, “a polynucleotide which hybridizes under stringent conditions to a polynucleotide specified in (a) and (b).” Part (d) of claims 1, 27, and 31 has been relabeled as part “(c)” and amended to recite, in relevant parts, “. . . specified in (a) or (b). . . .”

These amendments, which are fully supported by the specification and claims as originally filed, are made to present rejected claims in better form for consideration on appeal. *See* 37 C.F.R. § 1.116(b)(2). Specifically, the pending claims have been amended to delete the objected claim limitations. No new matter is introduced with these amendments. Accordingly, entry of instant amendments is respectfully requested.

II. PRIORITY

The PTO indicates that a certified copy of the priority application PCT/EP2004/006474 has not been received. Applicants submit herewith a certified copy of the priority application PCT/EP2004/006474.

III. REJECTION OF CLAIMS UNDER 35 U.S.C § 112, FIRST PARAGRAPH FOR LACK OF ENABLEMENT

Claims 1-3, 5, and 27-34 stand rejected under 35 U.S.C § 112, first paragraph, as allegedly failing to comply with the enablement requirement. The PTO acknowledges that the presently pending claims are enabled except part (c) of claims 1, 27, and 31 and part (d) as it relates to part (c). *See* Office Action at pages 3-7.

Solely to expedite prosecution, Applicants have amended claims 1, 27, and 31 to delete the rejected subject matter. Specifically Applicants deleted part (c), “a polynucleotide which hybridizes under stringent conditions to a polynucleotide specified in (a) and (b),” and amended part (d) to recite “c) a polynucleotide the sequence of which deviates from the

polynucleotide sequences specified in (a) or (b) due to the degeneration of the genetic code.” Applicants submit that the rejection is obviated by the amendments to claims 1, 27, and 31.

Accordingly, Applicants respectfully request that the rejection of claims 1-3, 5, and 27-34 under 35 U.S.C § 112, first paragraph, be withdrawn.

IV. REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH, WRITTEN DESCRIPTION

Claims 1-3 and 5 stand rejected under 35 U.S.C § 112, first paragraph, as allegedly failing to comply with the written description requirement. The PTO acknowledges that the presently pending claims comply with the written description requirement except part (c) of claims 1, 27, and 31 and part (d) as it relates to part (c). *See* Office Action at pages 7-10.

Solely to expedite prosecution, Applicants have amended claims 1, 27, and 31 to delete the rejected subject matter. Specifically, Applicants deleted part (c), “a polynucleotide which hybridizes under stringent conditions to a polynucleotide specified in (a) and (b),” and amended part (d) to recite “c) a polynucleotide the sequence of which deviates from the polynucleotide sequences specified in (a) or (b) due to the degeneration of the genetic code.” Applicants submit that the rejection is obviated by the amendments to claims 1, 27, and 31.

Accordingly, Applicant respectfully requests that the rejection of claims 1-3 and 5 under 35 U.S.C § 112, first paragraph, be withdrawn.

V. REJECTION OF CLAIMS UNDER 35 U.S.C. § 102(b)

Claims 1-3, 5, and 27-34 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by WO 02/090525 A2 (“’525 publication”). The PTO alleges that the ’525 publication teaches part (c) of claims 1, 27, and 31 directed to a polynucleotide which hybridizes under stringent conditions to polynucleotides specified in parts (a) and (b). *See* Office Action at pages 11-12.

Solely to expedite prosecution, Applicants have amended claims 1, 27, and 31 to delete part (c), “a polynucleotide which hybridizes under stringent conditions to a polynucleotide specified in (a) and (b).” Applicants submit that the rejection is obviated by the amendments to claims 1, 27, and 31.

As acknowledged by the Examiner, the ’525 publication purportedly discloses a polynucleotide that is only 88.2% identical to SEQ ID NO:10 and 76.4% identical to SEQ ID NO:4. *See* Office Action at pages 11-12. As such, the ’525 publication does not teach a

polynucleotide encoding a RC Kinase polypeptide comprising an amino acid sequence which is at least 90% identical to the amino acid sequence shown in SEQ ID NO: 10, or a polynucleotide comprising the sequence of SEQ ID NO: 4, or a polynucleotide the sequence of which deviates from such nucleotide sequences due to the degeneration of the genetic code. Therefore, the '525 publication fails to teach each and every element of independent claims 1, 27, or 31, or claims 2-3, 5, 28-30, or 32-34 that incorporate every limitation of the independent claims.

For at least these reasons, claims 1-3, 5, and 27-34 are not anticipated by the '525 publication. Accordingly, Applicants respectfully request the rejection of claims 1-3, 5, and 27-34 under 35 U.S.C. § 102(b) in view of the '525 publication be withdrawn.

VI. REJOINDER OF CLAIMS

Applicants submit that each of claims 4, 6-8, 10-13, 16-18, and 35-40 ultimately depends from and includes all the limitations of claim 1, 2, 4, 27, or 31. Pursuant to 37 C.F.R. § 1.141, upon allowance of claims 1, 2, 4, 27, and 31, Applicants respectfully request rejoinder of dependent claims 4, 6-8, 10-13, 16-18, and 35-40. *See* M.P.E.P. §§ 809 and 821.04.


CONCLUSIONS

In light of the above amendments and remarks, the Applicants respectfully request that the PTO reconsider this application with a view towards allowance.

No fee is believed to be due with the submission of this paper. However, the Commissioner is authorized to charge all required fees, or credit any overpayment, to Jones Day Deposit Account Number 50-3013 (order no. 191354-999016). The PTO is invited to call the undersigned attorney at (650) 739-3983 if a telephone call could help resolve any issues.

Respectfully submitted,

Date: June 18, 2010



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polynucleotide encoding a RC Kinase polypeptide comprising an amino acid sequence which is at least 90% identical to the amino acid sequence shown in SEQ ID NO: 10, or a polynucleotide comprising the sequence of SEQ ID NO: 4, or a polynucleotide the sequence of which deviates from such nucleotide sequences due to the degeneration of the genetic code. Therefore, the '525 publication fails to teach each and every element of independent claims 1, 27, or 31, or claims 2-3, 5, 28-30, or 32-34 that incorporate every limitation of the independent claims.

For at least these reasons, claims 1-3, 5, and 27-34 are not anticipated by the '525 publication. Accordingly, Applicants respectfully request the rejection of claims 1-3, 5, and 27-34 under 35 U.S.C. § 102(b) in view of the '525 publication be withdrawn.

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CONCLUSIONS

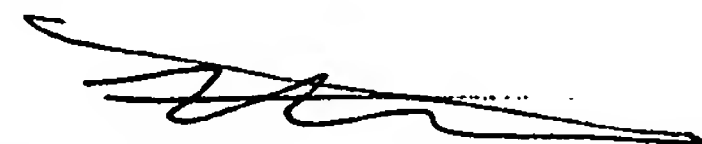
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Appendix A

A certified copy of the priority application PCT/EP2004/006474.